



Scottish  
Commission  
on Social  
Security

## **Scottish Commission on Social Security**

**Scrutiny Report on draft Regulations:**

# **The Suspension of Assistance (Disability Assistance for Children and Young People) (Scottish Child Payment) (Scotland) Regulations 2021**

**Submitted to the Scottish Government and the Scottish Parliament  
Social Security Committee on 18 November 2021.**

# Contents

Summary of recommendations and observations .....	3
1. Introduction.....	5
Amendments to the Social Security (Scotland) Act 2018 .....	5
2. Approach to scrutiny .....	6
2.1 SCoSS's remit .....	6
2.2 Principles and human rights.....	8
2.3 Scrutiny process .....	8
2.4 A Note on terminology.....	9
3. Scope of power to suspend.....	10
3.1 Impact on human rights and social security principles .....	11
3.2 Suspending all or part of an award .....	12
3.3 Time allowed to respond to requests for information.....	13
3.4 Bringing suspension to an end.....	14
4. Safeguards .....	15
4.1 Accessible communications, advocacy and supported decision-making .....	15
4.2 Duty to Have Regard to Financial Circumstances .....	17
4.3 Impact on passported benefits .....	20
4.4 Issues concerning payees, Appointees and persons with parental responsibility.....	21
4.5 The right to request review of a suspension .....	22
4.6 Exacerbating risk of abuse .....	23
Annex - Scrutiny timeline .....	25

## Summary of recommendations and observations

**Observation 1:** The making of substantively similar amendments to the SCP and DACYP Regulations is one of a number of scenarios in which section 97(1) of the 2018 Act creates what can appear to be an illogical divide between the parts of a set of draft Regulations that fall within and outside SCoSS's pre-legislative scrutiny function. There may be something to consider when primary social security legislation is next considered.

**Recommendation 1:** Scottish Government is invited to consider how it can clarify who is meant by the 'individual' and 'the person' as they appear in Social Security Regulations.

**Recommendation 2:** Scottish Government should amend SCP Regulations 2020, 19A(1) to refer to suspension of payment rather than entitlement.

**Recommendation 3:** Where there is a failure to provide information which is only needed to decide a possible increase in entitlement, the existing award should not be suspended.

**Recommendation 4:** Scottish Government is invited to reconsider the minimum statutory time of 14 days for response to requests for information pertinent to ongoing eligibility, with a view to extending it to 28 days, and give reasons for retaining 14 days should that be its conclusion.

**Observation 2:** SCoSS notes the particular importance of inclusive communication, advocacy and supported decision making in ensuring people are able to respond to a request for information material to their entitlement and understand why their award may be suspended, or has been suspended, the steps required to avoid or end the suspension, their right to review a decision to suspend and the protection available in cases of financial hardship (including the implications of invoking this protection).

**Recommendation 5:** Scottish Government should amend SCP Regulation 19C(2) to stipulate that the individual must have a permanent record of the information referred to in Regulation 19C(1) without specifying the form that must take.

**Recommendation 6:** Scottish Government should consider amending draft Regulation 3, so that a right to advocacy, similar to that conferred by section 10 of the 2018 Act, attaches to the suspension of SCP.

**Recommendation 7:** SCoSS invites Scottish Government to explain what actions it is planning to identify and safeguard individuals who face difficulty engaging in the suspension process and to consider whether this needs to be further enhanced.

**Recommendation 8:** Scottish Government should monitor the impact of the duty to have regard to financial circumstances before suspending payment of SCP to determine whether it in fact encourages claimants to engage with Social Security Scotland and whether it could result in avoidable overpayments.

**Recommendation 9:** Scottish Government should clarify the implications of suspension for passported entitlements (whether devolved or reserved) at the earliest opportunity. In doing so, it should consider whether there are scenarios in which it should be possible to complete the qualifying period for Young Carer Grant by providing care to someone whose CDP has been suspended.

**Recommendation 10:** Scottish Government should confirm at an early stage how it will resolve disputes between persons with parental responsibility regarding the suspension of social security assistance, and include this in published guidance.

**Recommendation 11:** Scottish Government should further amend SCP Regulation 19B to include a requirement that the outcome of a review and the next steps, if the person is dissatisfied with the outcome, are communicated to the person requesting a review.

**Recommendation 12:** SCoSS invites Scottish Government to explain the rationale for the proposed 31 day period for consideration of a request for review of a decision to suspend payment. In particular, why this is longer than the 16 working days normally allowed for re-determination of entitlement to social security assistance.

## 1. Introduction

The Scottish Commission on Social Security (SCoSS) is pleased to present its scrutiny report on the draft Suspension of Assistance (Disability Assistance for Children and Young People) (Scottish Child Payment) (Scotland) Regulations 2021. These amend the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (SSI 2021/174, hereafter the DACYP Regulations)<sup>1</sup> and the Scottish Child Payment Regulations 2020 (SSI 2020/351, hereafter the SCP Regulations). The purpose of the amendments is to empower Scottish Ministers to suspend payment of Child Disability Payment (CDP) or Scottish Child Payment (SCP) in specified circumstances.

### **Amendments to the Social Security (Scotland) Act 2018**

It was not possible to make provision for the suspension of payments in the original DACYP and SCP Regulations because the Social Security (Scotland) Act 2018 (2018 asp 9), as enacted, did not provide for the suspension of payment of any form of social security assistance. The Social Security Administration and Tribunal Membership (Scotland) Act 2020 (2020 asp 18) amended sections 51 and 54 of the 2018 Act and inserted a new schedule 11. These empower Scottish Government to make Regulations providing for the suspension of social security payments within the parameters specified by the 2018 Act (as amended). The draft Regulations serve to amend the DACYP and SCP Regulations so that payment of awards may be suspended in accordance with the Act. The Act envisages the suspension of payments in three circumstances, although only two of these will ultimately be reflected in the Regulations:

- The first scenario (Schedule 11, para 1(1)(a)) is when Social Security Scotland is carrying out a scheduled review of an award to which the claimant has an ongoing entitlement, or otherwise considering whether they are required to make a determination without application in relation to an ongoing award, in accordance with section 37, 43 or 52 of the Act. If Social Security Scotland requires further information 'material to the making of the determination', it can request this from the claimant. If the claimant fails to provide this information, section

---

<sup>1</sup> The DACYP Regulations establish child disability payment, which is a form of Scottish disability assistance within the scope of [section 31 of the Social Security \(Scotland\) Act 2018](#).

54 allows Social Security Scotland to suspend payment of assistance and subsequently move to terminate the award on the basis that the eligibility criteria are no longer fulfilled. Under section 54 as originally drafted, there was little option if information was not forthcoming but to end entitlement to all or part of the award.

- The second scenario (Schedule 11, para 1(1)(b)) is when arrangements have been made to pay social security assistance to which an individual is entitled to another person. Such arrangements may be made ‘under section 85A, 85B (of the 2018 Act) or otherwise’ – that is, payment may be made to an appointee empowered to manage the individual’s claim, or to a person who is not an appointee, but simply receives payment on behalf of the individual to whom the award is made. Payments can be suspended if Social Security Scotland considers it necessary to protect the claimant from financial abuse, if the payee is no longer able to act in that capacity or for other reasons the Regulations might specify.
- The Act also empowers Scottish Government to make Regulations that provide for the suspension of assistance in a third scenario (Schedule 11, para 11(1)(c)), when the individual to whom the award is made asks Social Security Scotland to temporarily cease payment of their award.

Draft Regulation 2 amends the DACYP Regulations to enable Social Security Scotland to suspend payment of Child Disability Payment in the first two scenarios set out in the Act. Draft Regulation 3 amends the SCP Regulations to enable Social Security Scotland to similarly suspend payment of SCP.

## **2. Approach to scrutiny**

### **2.1 SCoSS’s remit**

Sections 22 and 97 of the 2018 Act require Scottish Government to submit Regulations made within the scope of part 2, chapter 2, or section 79 of the Act to SCoSS for pre-legislative scrutiny. Draft Regulation 2, amending the DACYP Regulations, is made within the

scope of part 2, chapters 3 and 4. This means it does not have to be referred to SCoSS for pre-legislative scrutiny, as it is not covered by scrutiny function in section 97.<sup>2</sup> However, draft Regulation 3, amending the SCP Regulations, is made within the scope of section 79 and therefore, is subject to pre-legislative scrutiny by SCoSS.

This is a potentially confusing scenario. The rationale for the different scrutiny requirements that pertain to Regulations made using powers conferred by different parts of the Act is not entirely clear. Indeed, the line between Regulations that fall within the scope of part 2, chapter 2 and those that do not can be decidedly blurred. This is not the first time that a set of Regulations referred to SCoSS has contained elements that fall within our remit and elements that do not, but the issue is thrown into sharp relief because Regulations 2 and 3 are so similar. Logically, many of the points that SCoSS might wish to make about draft Regulation 3 (in scope for scrutiny) will be equally applicable to draft Regulation 2 (technically out of scope).

We were very grateful to receive clarification from the Scottish Government that it will welcome SCoSS's views, observations and recommendations on all provisions contained in Regulations referred to us for scrutiny, even if it is not strictly under any legal obligation to do so. However, this informal arrangement is not entirely satisfactory and there does appear to be a need for a more formal review of the scope of SCoSS's pre-legislative scrutiny role in advance of the next piece of primary social security legislation.

**Observation 1: The making of substantively similar amendments to the SCP and DACYP Regulations is one of a number of scenarios in which section 97(1) of the 2018 Act creates what can appear to be an illogical divide between the parts of a set of draft Regulations that fall within and outside SCoSS's pre-legislative scrutiny function. There may be something to consider when primary social security legislation is next considered.**

---

<sup>2</sup> However, Child Disability Payment is a form of disability assistance and as such is created within the scope of Chapter 2.

## 2.2 Principles and human rights

In exercising any of its functions, SCoSS may have regard to relevant provisions of human rights law. In its pre-legislative scrutiny function, SCoSS must have regard to human rights law and the social security principles<sup>3</sup>. As always, then, the principles and human rights law form an important part of the lens through which the draft Regulations have been scrutinised.

The introduction of a power to suspend payment in defined circumstances within the DACYP and SCP Regulations has implications for various social security principles and human rights obligations. Relevant principles and human rights are highlighted as appropriate throughout the report. However, it is important to note that they do not necessarily apply in the same way to all the scenarios for suspension, particularly where continued eligibility is in question. Additionally, much will depend on effective safeguards and how they are implemented. Suspending payments could either be a means of preserving entitlement and associated rights that would otherwise be lost, or be an unwarranted interference with those rights.

## 2.3 Scrutiny process

The draft regulations scrutinised in this report were formally submitted to SCoSS on 25 June 2021 by the Minister for Social Security and Local Government, Ben Macpherson MSP, with a deadline for reporting of 2 August 2021. This was so provisions came into force at the same time as the national launch of Child Disability Payment. SCoSS shared its draft recommendations with Scottish Government on 3 August 2021.

Subsequently, the Scottish Government informed SCoSS that, by the time they are laid, the draft Regulations will be renamed as the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Scottish Child Payment Regulations 2020 (Miscellaneous Amendments) Regulations. This change reflects the addition of new draft Regulations not connected with the suspension of assistance. The new provisions will receive pre-legislative scrutiny separately.

---

<sup>3</sup> The principles are set out in [section 1 of the 2018 Act](#).

Referral of the Suspension Regulations came at a time when the Commission was experiencing an exceptionally heavy workload and changes to secretariat personnel. Nonetheless, we were able to consult a few key stakeholders. We are very grateful for the timely, important and informative responses we received. These have informed the following report in a number of respects.

We were also able to invite Scottish Government officials to a SCoSS Board meeting to discuss the draft Regulations and we submitted written questions following the Board meeting to which officials responded by email.

Due to the tight timelines and longstanding leave arrangements, it has not been possible for all SCoSS members to contribute to this report. On this occasion, Sharon McIntyre was unavailable during much of the reporting period and this report therefore comes primarily from the three remaining SCoSS members.

## **2.4 A Note on terminology**

It has become standard practice for Scottish Social Security Regulations to refer to the person to whom they apply as ‘the individual’ or ‘the person’. These terms have a specific meaning in the context, but in everyday language can mean essentially anyone – and this creates potential for confusion. The suspension of a CDP payment in particular could involve multiple parties: the child to whom the award is made, the person with parental responsibility who manages the award, or an appointee who does so, and potentially another person who has been nominated to receive payment on behalf of the child. While there is no question over the legal effect of the Regulations, careful reading is sometimes required to understand whom ‘the person’ refers to (‘the individual’ appears to consistently refer to the individual to whom the award is made).

**Recommendation 1: Scottish Government is invited to consider how it can clarify who is meant by the ‘individual’ and ‘the person’ as they appear in Social Security Regulations.**

There is an inconsistency in the wording of DACYP Regulation 26A(1) and 26A(2), and similarly between SCP Regulation 19A(1) and 19A(2). In each case, paragraph 1 refers to suspension of *entitlement*, whereas

paragraph 2 refers to suspension of *payment*. This ambiguity is also present in the primary legislation. Section 12 of the 2020 Act, which amends the 2018 Act to introduce the power to suspend, is headed ‘Power to suspend payment of assistance’. However, some of the new provisions inserted into the 2018 Act refer to suspension of entitlement, or simply (in common with the cross-heading preceding section 12) to the suspension of assistance. Scottish Government has advised SCoSS that it makes no distinction between the three terms. However, some of the stakeholders who responded to SCoSS’s call for views on the draft Regulations argued that the Regulations should be amended to refer consistently to the suspension of payment rather than entitlement.

**Recommendation 2: Scottish Government should amend SCP Regulations 2020, 19A(1) to refer to suspension of payment rather than entitlement.**

### **3. Scope of power to suspend**

DACYP Regulation 26A and SCP Regulation 19A define the scope of the power to suspend, which is identical for both forms of social security assistance. In keeping with the Act, payment may be suspended following failure to provide (on request from Social Security Scotland) information material to the determination of ongoing entitlement,<sup>4</sup> to protect the claimant from financial abuse,<sup>5</sup> when a payee other than the claimant is unable to continue in that capacity or on request by the claimant. It is important to note that suspension can only apply to a situation where the continuance of payment/entitlement is the issue, not to initial claims.

Paragraph 1(1)(b) of schedule 11 to the 2018 Act (as amended) allows Scottish Government to specify essentially any other possible grounds for suspension of payments to a person other than the claimant, but in

---

<sup>4</sup> The request for information might be due to a scheduled review (under DACYP Regulation 30), because Social Security Scotland thinks a previous determination may have been made in error (DACYP Regulation 32 or 33; paragraph 6 and 7 of the Schedule to the SCP Regulations), or because Social Security Scotland becomes aware of a change of circumstances that could have implications for continuing entitlement (DACYP Regulation 31; paragraph 10 or 11 of the Schedule of the SCP Regulations).

<sup>5</sup> SCP Regulation 19F(b) and schedule 11 para 1(2) to the 2018 Act define ‘financial abuse’ so as to include circumstances in which the victim has money or other property stolen, is defrauded, comes under pressure in relation to money, or other property, or has money, or other property misused.

this case it has chosen not to do so. The Act and draft Regulations set clear boundaries on the circumstances in which the power to suspend is available and do not allow for its use in a punitive manner. Nonetheless, a number of issues remain.

### **3.1 Impact on human rights and social security principles**

The draft Regulations will insert new provisions – DACYP Regulation 26A and SCP Regulation 19A – that set out the circumstances under which Social Security Scotland may suspend ongoing payment of CDP, or SCP.

A broad power to suspend payment of social security assistance, used arbitrarily, or punitively could clearly undermine the claimant's enjoyment of the right to social security. The suspension of a social security payment thus clearly has potential for interference with the individual's right to social security (article 9, International Covenant on Economic, Social and Cultural Rights (ICESCR) and to the peaceful enjoyment of their possessions (Protocol 1, Article 1, European Convention on Human Rights (ECHR)). The purpose for which payments are made means that suspension of SCP could also represent an interference with the right to respect for family life (article 8 ECHR), while suspension of CDP would arguably be an interference with the right to be included in the community (article 19, Convention on the Rights of Persons with Disabilities (CRPD)). However, suspension is a lesser interference with these rights than termination of all or part of the individual's award, which might previously have been the only available response to failure to provide information material to the determination of whether the individual remains entitled to Child Disability Payment (CDP), or Scottish Child Payment (SCP). The decision to limit the scope of the power to suspend also goes some way towards safeguarding against its use in a punitive or arbitrary manner.

However, in a situation where continued entitlement – the right to assistance – is in question,<sup>6</sup> so too are the rights that flow from that. Conversely, where an individual has requested suspension, or where the person who receives payment on behalf of the individual is suspected of

---

<sup>6</sup> Social Security Scotland should only request information from an individual with an ongoing award if it is needed to determine the individual's continuing entitlement to all or part of that award, or to an award at the same level.

financial abuse, or unable to continue to accept payment, the individual's right to assistance is not in question. It is unclear what would have happened in the absence of a power to suspend in cases of suspected financial abuse, or if a payee were unable to continue to accept payment. Scottish Government has advised SCoSS that it would take legal advice on the matter, but might have no choice but to continue to make payment, while moving to identify a new payee as quickly as possible. In this context, the new power to suspend provides welcome clarity and reduces the risk of continuing to pay assistance to a person who is financially abusing the individual who is supposed to benefit from the award.

Also noteworthy is that the primary legislative provisions allowing for suspension of payments were introduced in response to lobbying by a coalition of stakeholders, who identified their absence as a shortcoming in the 2018 Act, as enacted. The amendment of the Act and subsequently of the DACYP and SCP Regulations is a possible example (in accordance with principle (g)) of improvement of the devolved social security system in a way that is in the interest of individuals whose awards might otherwise have been terminated, on the basis of evidence brought to Scottish Government's attention (in accordance with principle (f)). Suspending rather than terminating an award may also improve the efficiency of the social security system (in accordance with principle (h)) by reducing the need for reapplications.

Overall, therefore, the introduction of a power to suspend has potential to enhance the role of CDP and SCP in the realisation of the right to social security and other related rights, in accordance with principle (b), as long as the necessary safeguards are in place to protect individuals from its inappropriate use.

### **3.2 Suspending all or part of an award**

DACYP Regulation 26A(1) refers to the suspension of "one component or both components" of a CDP award, while SCP Regulation 19A(1) refers to the suspension of "all or part" of a SCP award. This is in the context of Scottish Government's duty to consider the claimant's financial circumstances before taking a decision to suspend, rather than the actual power to suspend, which is established by DACYP Regulation 26A(2) and SCP Regulation 19A(2). These respectively state that "an

individual's payment of Child Disability Payment may be suspended" and that "an individual's payment of Scottish child payment may be suspended" in the stipulated circumstances.

Some stakeholders have advised SCoSS that they believe greater clarity is required that, where there is doubt regarding entitlement to one component of a CDP award, or in respect of one child covered by a multi-child SCP award, the power to suspend only applies to that part of an award where entitlement is in doubt. On closer examination, SCP Regulation 19F(a) and schedule 11 paragraph 7 to the Act make clear that suspension may apply to "some or all" of the assistance to which the claimant would otherwise be entitled.

Scottish Government has advised SCoSS that the power to suspend following failure to provide information could be used when the information requested is in relation to a possible increase in entitlement. While it is clearly in the claimant's interest to provide such information, where there is no risk of overpayments accruing it is questionable whether an understandable desire to ensure people take up their full entitlements (in keeping with *Our Charter*)<sup>7</sup> would override the negative effects of suspension. It is far from clear that there is any case for suspending an existing award, or those parts of one, where eligibility is not in doubt.

**Recommendation 3: Where there is a failure to provide information which is only needed to decide a possible increase in entitlement, the existing award should not be suspended.**

### **3.3 Time allowed to respond to requests for information**

DACYP Regulation 26F and SCP Regulation 19F stipulate the minimum period that Social Security Scotland must allow for a claimant to respond to a request for information material to a possible determination of ongoing entitlement. A request for information must allow the claimant a minimum of 14 days to respond. On the first occasion that the claimant fails to provide the requested information within the deadline set, Social

---

<sup>7</sup> ['A better future', commitment 11; work to improve take-up, ensuring as many people as possible get what they are entitled to, making a particular effort to reach people who are most likely to be excluded.](#)

Security Scotland may suspend payment of assistance. Following another period of at least 14 days, the award may be terminated.

Some stakeholders have advised SCoSS that they believe this minimum period is too short. Scottish Government has told SCoSS that, in practice, they do not envisage any scenario in which the time limit for a response is set at less than 28 days. Further, payment will not automatically be suspended at the end of this 28-day period. If the claimant engages with Social Security Scotland then reasonable requests for additional time to supply the required information will be accommodated. We therefore question the logic of setting a minimum period of 14 days in the Regulations when there appears to be no expectation that the actual minimum period will ever be less than 28 days.

**Recommendation 4: Scottish Government is invited to reconsider the minimum statutory time of 14 days for response to requests for information pertinent to ongoing eligibility, with a view to extending it to 28 days, and give reasons for retaining 14 days should that be its conclusion.**

### **3.4 Bringing suspension to an end**

DACYP Regulation 26D and SCP Regulation 19D set out the circumstances in which a suspension should be ended. When the suspension is on the grounds of failure to provide information, it can come to an end in three ways: when the claimant provides the information and Social Security Scotland decides there are no grounds to vary the award; when Social Security Scotland receives the information and decides the award should be varied or terminated and makes a determination to that effect; or when the claimant again fails to provide information within the required period and the award is terminated on that basis. If suspension is on the basis of suspected financial abuse or the absence of a suitable payee, then suspension ends when those circumstances no longer apply. DACYP Regulation 26E and SCP Regulation 19E then provide that, if it is clarified that the claimant was entitled to the suspended award during the period of suspension, a back payment will immediately be made.

SCoSS notes that inclusion of provisions on back payments is necessary to ensure individuals do not miss out on assistance to which they had a right during the period of suspension. There is a wider issue concerning what 'aftercare' Social Security Scotland can or ought to provide to individuals whose award comes to an end above and beyond their statutory entitlement to short-term assistance if they decide to challenge the determination. This applies whether termination comes at the end of a period of suspension or otherwise, and is particularly applicable where an award is terminated with overpayments outstanding. SCoSS would encourage Scottish Government to give this matter some thought, and we may return to the issue in the future within the scope of our oversight role in relation to the Charter.

## **4. Safeguards**

The Regulations introduce a number of important safeguards that aim to prevent suspension being used in ways that work against human rights and social security principles. However, here again this is not always straightforward and there is a case for strengthening and/ or clarifying safeguards in a number of respects.

### **4.1 Accessible communications, advocacy and supported decision-making**

The draft Regulations are intended to, and must, protect users of the Scottish social security system from overpayments, financial abuse and problems resulting from payment of an award to someone who otherwise cannot or should not act in this role. There is also a need to protect individuals from the possible negative consequences of suspension itself, so far as this is possible, and ensure individuals know how to avoid or respond to suspension (including their right to request a review). If these things are to be achieved, there is an overarching need for Social Security Scotland to take account of the need for accessible communication, advocacy and supported decision-making at all stages of the suspension process.

Communication needs to be in a form that works for service users in line with commitments in Our Charter<sup>8</sup> and Section 4 of the Social Security (Scotland) Act, 2018. SCoSS acknowledges and welcomes Social Security Scotland's aspiration to be 'a leader in inclusive communication'.<sup>9</sup> By taking steps to maximise the chances of individuals in vulnerable circumstances understanding what is happening to their award and receiving independent guidance on how best to respond, Scottish Government can ensure such individuals' equal enjoyment of their right to social security, in accordance with article 2(2) ICESCR and principle (g).

This begins at the point where a need for information material to a determination regarding continuing entitlement is identified. The affected individual must understand what information is being sought, why and the implications of a failure to respond, with a view to avoiding suspensions where at all possible. Following a decision to suspend, DACYP Regulation 26C and SCP Regulation 19C require Social Security Scotland to inform the individual of the decision to suspend, the reason(s) for the decision, what actions are required to bring the suspension to an end and the right to request a review of the decision. The information must be communicated in a form that allows the claimant to share it with others. Some stakeholders suggested to SCoSS that the duty should be to supply information in writing. However, SCoSS is of the view that if a claimant prefers to receive communication in a different form, the Regulations should not preclude this<sup>10</sup>. We would stress that the individual should have a *permanent* record of the decision<sup>11</sup>.

Section 10 of the 2018 Act sets out the individual's right to advocacy where this is required to engage with the determination of their entitlement. Scottish Government has advised SCoSS that, in its view, this right does not apply to a decision to suspend, as this is not a determination. However, Scottish Government has stated that it will aim to ensure individuals whose payment is suspended nonetheless have access to advocacy where required. While this undertaking is welcome,

---

<sup>8</sup> Under the "[Processes that work](#)" section the Charter details that Social Security Scotland will "adapt processes and ways of communicating as much as we reasonably can to meet your needs and preferences, for example by providing interpreters."

<sup>9</sup> [Social Security Scotland: Inclusive Communication](#)

<sup>10</sup> By way of example, applicants to the [Scottish Welfare Fund](#) receive written communication by default, but can request an alternative format – this is a possible model.

<sup>11</sup> Universal credit claimants have found their appeal rights undermined because information was deleted from their journal see – [Child Poverty Action Group \(CPAG\)](#)

it would be preferable if those who require advocacy had a legal right to it. One stakeholder suggested that where a decision to suspend concerns an individual with a learning disability or mental health condition then advocacy services should be automatically alerted. If such an approach were adopted, it would be important to ensure this did not go against the wishes of the individual concerned. Access to supported decision-making to enable individuals to make their own informed decisions (as opposed to substituted decision-making) would be in line with CRPD article 12, and principle g (ii) on advancing equality and non-discrimination.

**Observation 2: SCoSS notes the particular importance of inclusive communication, advocacy and supported decision making in ensuring people are able to respond to a request for information material to their entitlement and understand why their award may be suspended, or has been suspended, the steps required to avoid or end the suspension, their right to review a decision to suspend and the protection available in cases of financial hardship (including the implications of invoking this protection).**

**Recommendation 5: Scottish Government should amend SCP Regulation 19C(2) to stipulate that the individual must have a permanent record of the information referred to in Regulation 19C(1) without specifying the form that must take.**

**Recommendation 6: Scottish Government should consider amending draft Regulation 3, so that a right to advocacy, similar to that conferred by section 10 of the 2018 Act, attaches to the suspension of SCP.**

**Recommendation 7: SCoSS invites Scottish Government to explain what actions it is planning to identify and safeguard individuals who face difficulty engaging in the suspension process and to consider whether this needs to be further enhanced.**

## **4.2 Duty to Have Regard to Financial Circumstances**

DACYP Regulation 26A(1) and SCP Regulation 19A(1) require Scottish Government to have regard to the claimant's financial circumstances before taking a decision to suspend payment of a CDP or SCP award. At face value, this appears to be an important provision, but it also carries

inherent risks. Suspension of a social security payment always has potential to take a household's income below the poverty line, or to deepen poverty, which might be in tension with the right to an adequate standard of living (article 11, ICESCR). This is particularly true of low-income benefits, such as SCP, but disability is also associated with lower income households<sup>12</sup>. Measures that cause poverty may run contrary to principle (e), although the principle is not a decisive argument against the existence of a power to suspend – the termination of an award because of failure to provide information, or running up a large overpayment while Social Security Scotland awaits information, would also result in hardship. The principle does mean it is appropriate to consider safeguarding measures. Scottish Government has advised SCoSS that, in practice, the duty to have regard to financial circumstances means that if the individual to whom the award is made (or their parent, or an appointee) self-declares that suspension would result in hardship, the default position would be that suspension should not go ahead. SCoSS has several misgivings about this approach.

First, if suspension is considered due to failure to provide information relevant to the confirmation of entitlement, and the ultimate determination is that the claimant is no longer entitled to their award, then it would be important to ensure the decision not to suspend could not serve to store up greater hardship for the future by allowing overpayments to build up. Scottish Government has advised us that a more objective test of hardship would be administratively complex and that it will provide claimants with sufficient information about the possible consequences of invoking the hardship provision to enable them to make informed decisions. Nonetheless, this could be quite a difficult decision. Further, the purpose of suspension under Regulation 26A(2)(a) or 19A(2)(a) is to prompt the claimant to engage with Social Security Scotland and supply the further information that is required. There is clearly an expectation on the part of Scottish Government that if the claimant engages sufficiently to declare financial hardship, then Social Security Scotland will be a step closer to securing the information it needs. That may well be the case in many (or most) instances, but cannot be taken for granted in every case and the ultimate

---

<sup>12</sup> [Poverty and Income Inequality in Scotland 2016-19](#), Scottish Government.

consequences of the hardship provision for claimants should be monitored closely.<sup>13</sup>

The main income replacement benefits are not devolved, so Social Security Scotland cannot suspend or terminate awards. Nonetheless, disability and top-up benefits can act as a much-needed supplement to an otherwise low income and their suspension would inevitably have some impact. Scottish Government has advised SCoSS that suspension will be a last resort, when all other means of obtaining the necessary information from the individual or a third party have been attempted. It is important that this is the case in practice, and that contact with individuals with a view to obtaining information material to their award take full account of their communication needs and any relevant disability or health condition that may be the reason for failure to engage.

Where suspension is because of issues relating to the person who receives a payment of social security assistance on behalf of the individual to whom the award is made, there are different concerns about the appropriateness of the duty to have regard to financial circumstances. If suspension is being considered to protect an individual from financial abuse, in many cases the implication must be that Social Security Scotland has reason to believe that the payee is effectively stealing the money from the individual. Deciding not to suspend could therefore benefit the abuser and not the individual with entitlement. Scottish Government must also consider the possibility that a request not to suspend on the basis of hardship might, in such circumstances, be prompted by the abuser. Scottish Government officials have advised SCoSS that the duty does not amount to a right to have suspensions waived on request and that the need to protect individuals from financial abuse would be taken into account. Similarly, if suspension is being considered because the payee is unable or unwilling to continue in that capacity, it is questionable whether it is feasible to do anything but suspend payment until a replacement can be found.

**Recommendation 8: Scottish Government should monitor the impact of the duty to have regard to financial circumstances before suspending payment of SCP to determine whether it in fact**

---

<sup>13</sup> [R on the application of Turner v Secretary of State for Work and Pensions \[2021\]](#) EWHC 465 (Admin) concerned a benefit claimant who starved to death after his award was automatically terminated for failure to engage with the Department of Work and Pensions (DWP). Loss of benefit did not prompt the individual to make contact.

**encourages claimants to engage with Social Security Scotland and whether it could result in avoidable overpayments.**

### **4.3 Impact on passported benefits**

Where the form of social security assistance whose suspension is under consideration confers passported entitlement to either a UK benefit or another form of Scottish social security assistance, there is potential for that passported entitlement to be affected by suspension. Scottish Government has advised SCoSS that it is not currently certain what the implications for passported entitlements are likely to be if CDP payments are suspended (SCP is not a passporting benefit). However, its working assumption is that:

- Passported benefits and premia paid by DWP, HMRC or local authorities are unlikely to be paid while CDP is suspended.
- Applications for Young Carer Grant (YCG) will not be determined while the cared-for person's CDP is suspended, but if it is subsequently confirmed that the cared-for person was entitled to CDP during the period of suspension then the young carer will be able to retrospectively use this as all or part, of the qualifying period.
- There will be no impact on entitlement to Child Winter Heating Assistance (CWA) until the September 2022 qualifying period at the earliest. Scottish Government will consider what impact the suspension of CDP should have on entitlement to CWA in the interim.

The possibility of an impact on passported entitlements may have different implications depending on the reason for suspension. If suspension occurs due to failure to provide information, with a view to protecting the individual from overpayments of CDP, then it will also serve to protect the individual from overpayments of the passported entitlement. The risk associated with waiving suspension is therefore increased. Alternatively, where suspension relates to suspected financial abuse or an unsuitable payee, it might be that some individuals are better served by waiving suspension and allowing the passported entitlement to remain in payment. This is assuming that the passported entitlement is not itself subject to financial abuse or is not paid to the same, unsuitable person. It could be extremely difficult for Social

Security Scotland to take a view on whether this is the case, not least because the DWP might be better placed to assess whether the person who receives payment of the passported entitlement should remain in this role.

In the case of Young Carer Grant specifically, SCoSS notes that, in order to be entitled to an award, the applicant must provide care to a person or persons 'to whom a qualifying disability benefit is **normally payable**' (emphasis added).<sup>14</sup> While we acknowledge that the working assumption set out above is not settled policy, SCoSS believes that such an approach would be inappropriate in circumstances where the cared-for person's CDP has been suspended due to suspected financial abuse or issues with the payee. In this scenario there is no question about the individual's underlying entitlement to CDP, therefore it seems reasonable to treat them as a person to whom CDP would normally be payable. In the case of suspension pending further information, which implies that there is a question mark over the individual's continued fulfilment of the eligibility criteria for CDP, the approach outlined in the working assumption may be more reasonable.

While SCP does not itself act as a passport, it is contingent on receipt of designated reserved means tested benefits or tax credits. The interconnections between devolved and reserved benefits can be varied and complex. Thus, when suspending devolved benefit it will be important to consider if there are implications for associated reserved benefits too.

**Recommendation 9: Scottish Government should clarify the implications of suspension for passported entitlements (whether devolved or reserved) at the earliest opportunity. In doing so, it should consider whether there are scenarios in which it should be possible to complete the qualifying period for Young Carer Grant by providing care to someone whose CDP has been suspended.**

#### **4.4 Issues concerning payees, Appointees and persons with parental responsibility**

Scottish Government has advised SCoSS that it is currently devising, and will in time consult on, guidelines for the appointment of appointees.

---

<sup>14</sup> Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 no 324 reg 6(1)

These guidelines are also likely to inform decisions on when a person who receives payment of social security assistance on behalf of the individual to whom the award is made is 'unable' to continue in that role. However, there is a case for guidance to go wider when it comes to clarifying who is a suitable person to receive payment of social security assistance on behalf of an individual.

Where the award is made to a child, and the claim is managed by and assistance paid to a parent, there is potential for issues to arise between parents with authority. Suspension of payment at the request of the claimant is unproblematic when the award is made to an adult who manages their own claim. This will be the case for most SCP awards. However, where the award is to a child, as in the case of most CDP awards, both parents will normally have authority to act on the child's behalf. This raises the potential that one parent could request suspension of payment contrary to the wishes of the other. Scottish Government has advised SCoSS that its default position is to respect the wishes of the person with parental responsibility who is actually receiving assistance on behalf of the child unless it has reason to believe they are not acting in the child's interests, but that it will give further consideration to how it should manage such disputes.

**Recommendation 10: Scottish Government should confirm at an early stage how it will resolve disputes between persons with parental responsibility regarding the suspension of social security assistance, and include this in published guidance.**

#### **4.5 The right to request review of a suspension**

DACYP Regulation 26B and SCP Regulation 19B stipulate that an individual whose payment of CDP or SCP is suspended has a right to request a review of the decision to suspend. Social Security Scotland must complete this review within 31 days of receiving the request, which is longer than the normal period allowed for a re-determination of entitlement to social security assistance. In contrast to re-determination requests, there is no time limit within which the request for review must be made. Clearly, procedural justice, embodied in article 6 and protocol 1, article 1, ECHR, requires that individuals have an opportunity to

challenge interference with their property rights (which include social security entitlements).

Some stakeholders expressed concern to SCoSS that there is no explicit duty to inform the claimant of the outcome of the review and of the next steps if they remain dissatisfied. SCoSS agrees that it will be necessary to provide this information, particularly as the process for challenging a decision to suspend is different to challenging a determination of entitlement – the individual may not appeal to a tribunal, but would have to submit a complaint and perhaps ultimately seek leave to bring a judicial review.

**Recommendation 11: Scottish Government should further amend SCP Regulation 19B to include a requirement that the outcome of a review and the next steps, if the person is dissatisfied with the outcome, are communicated to the person requesting a review.**

**Recommendation 12: SCoSS invites Scottish Government to explain the rationale for the proposed 31 day period for consideration of a request for review of a decision to suspend payment. In particular, why this is longer than the 16 working days normally allowed for re-determination of entitlement to social security assistance.**

#### **4.6 Exacerbating risk of abuse**

Communication of a decision to suspend and the reasons for it may be particularly delicate when payment is suspended with a view to protecting an individual from financial abuse. If the suspected abuser is the parent of the individual to whom the award is made (where the individual is a child), or an appointee, or lives at the same address, then it is likely that they will at least have an opportunity to read communication from Social Security Scotland. This could leave the individual with the award exposed to other forms of abuse, or lead to repercussions for whoever may be suspected by the person of prompting suspension of the payment they were receiving. As noted above, this could include putting the individual under pressure to declare financial hardship with a view to avoiding suspension. This would inevitably be a very difficult situation to address and all SCoSS can do is note that we have received an assurance from Scottish Government that

it is aware of the possibility and will endeavour to minimise risk to the claimant or other parties, working in partnership with individuals or organisations as appropriate.

## Annex - Scrutiny timeline

- 25 June 2021 Draft Regulations referred to SCoSS by the Minister for Social Security and Local Government.
- 30 June 2021 SCoSS Board meeting, including a general briefing on the draft Regulations from lead Scottish Government officials. Initial comment provided by stakeholders; Voice of the Child Alliance and CPAG.
- 12 July 2021 Questions on draft Regulations submitted to Scottish Government officials.
- 15 July 2021 Stakeholder views received from; AdvoCard, Voice of the Child Alliance, Carers Trust Scotland, Citizens Advice Scotland, The Action Group, Coalition of Care and Support Providers, CPAG Scotland and Inclusion Scotland.
- 27 July 2021 SCoSS internal meeting to discuss over-arching issues. Issues and Questions response requested from Scottish Government.
- 29 July 2021 Issues and Questions response received from Scottish Government.
- 3 August 2021 SCoSS draft recommendations released to Scottish Government officials.
- 14 October 2021 New draft amendment Regulations referred to SCoSS by the Minister for Social Security and Local Government.  
SCoSS advised these Regulations will be laid as part of the Disability Assistance for Children and Young People (Scotland) Regulations 2021 and the Scottish Child Payment Regulations 2020 (Miscellaneous Amendments) Regulations (The Suspension of Assistance (Disability Assistance for Children and Young People) (Scottish Child Payment) will be revised and retitled and will incorporate these additional provisions). The amendments deal with Pre-emptive Application, Habitual Residence Test and the

Re-determination timer start after first-tier Tribunal upheld.

18 November 2021 SCoSS report signed off and laid.

November 2021 SCoSS report published.



Scottish Government  
Riaghaltas na h-Alba  
gov.scot

© Crown copyright 2022

**OGL**

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](https://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at [www.gov.scot](http://www.gov.scot)

Any enquiries regarding this publication should be sent to us at

The Scottish Government  
St Andrew's House  
Edinburgh  
EH1 3DG

ISBN: 978-1-80201-864-6 (web only)

Published by The Scottish Government, January 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS991066 (01/22)

W W W . g o v . s c o t